

## Clerk's File Copy

THE MAGNAVOX COMPANY, et al.,

Plaintiff,

vs.

CHICAGO DYNAMIC INDUSTRIES  
and SEEBURG CORP.,

Defendants.

No. 74 C 1030  
and  
74 C 2510

BEFORE: The Honorable JOHN F. GRADY, Judge.

Tuesday, December 28, 1976

10:15 o'clock a.m.

Resumed pursuant to adjournment.

PRESENT:

MR. ANDERSON  
MR. WILLIAMS  
MR. ALLEGRETTI  
MR. BRIODY

appeared for The Magnavox Company;

MR. GOLDENBERG  
MR. RIFKINappeared for the Seeburg defendants and  
World Wide Distributors.

FILED

MAR 2 - 1977

H. Stuart Cunningham, Clerk  
United States District Court

THE COURT: All right, gentlemen.

MR. GOLDENBERG: Before we commence this morning, your Honor, I would like to ask the Court with respect to the matter of depositions which either party has taken and would like in some fashion to have made of record in this trial.

As with all depositions, there is a lot of chaff in there with the wheat. I would like to ask the Court's preference as to how it would like that kind of thing to come into the record.

THE COURT: Well, I have done it both ways. Where it is not too extensive, I have had counsel read the parts that they felt were salient. In other instances, where they were really voluminous, I have just read the deposition. In this case, if the depositions are voluminous, I think the thing to do would be for me to read them. You can offer them into evidence, and I promise you that I will read them.

If you are talking, say, about a matter of ten or fifteen pages per witness, or something of that kind, I would let you read it into the record, and I will deal with it.

What are we talking about?

MR. ANDERSON: I do not think the latter is the case, your Honor.

As far as I understand our record in pretrial, I think it would be considerably more than that, if anything is put in, because of the extensive discovery that was taken.

THE COURT: I will read them.

What about the matter of objections? Is there anything in them that is, in the view of either side, objectionable?

MR. ANDERSON: Objections were raised to certain matters as the depositions were taken, and I have not reviewed them in that light. I have not designated to Mr. Goldenberg the portions that I have used, and he has not done that for me.

So that does raise that problem.

THE COURT: Well, we could handle that in this fashion. It's not much of a way to build a record, I realize, but considering the latitude that the Court has in a bench trial, I don't know how much good a record does you on objections, anyway. I can read them and take the objections into consideration and rule upon them in my own mind and consider that which I find admissible, and reject that which I find inadmissible, and if there is anything as to which you would want me to indicate for the record how I rule, I'll do so, if you will mark that.

MR. ANDERSON: All right. I think, if I may, in this case, for example, there are 14 days of deposition of Mr. Harrison and Mr. Rusch. I think it would be an unfair burden on the Court to expect the Court to read all of that, and I just discussed with Mr. Goldenberg the possibility that we might follow -- I have never done it -- but we could put the entire depositions in at the time of the trial subject to each of us removing what we don't want, say, by the time we filed our last brief, so that you would get a more succinct record to work with.

THE COURT: Well, now, here, let me tell you something else about how I conduct these matters.

I'm going to try to decide this case from the bench at the conclusion of trial. I find that that is, by far, a more expeditious way of doing it, and the way that is more satisfactory in every respect.

Now, if it's too much for me, I'm not going to try to do it. I realize that it's a complex case.

But, as a practical matter, I'm never going to master all of the technological complexities of this case. If anyone thinks otherwise, we are fooling ourselves. The most that I will ever have is a broad grasp of these electronic technicalities, if that. Therefore, I'm going to have to decide this case on the basis of a broad sweep and on the basis of a general findings of fact, and I think that by the time the evidence is over, I will have a sufficient grasp of the facts in that sense to enable me to state what my general findings of fact and conclusions of law are, and then I may ask counsel to prepare those specific findings that you feel are necessary for the protection of your rights in the form of an order for me to sign.

In other words, what I'm saying to you, I don't contemplate that I will need any briefs at the end of this case, I don't plan to continue it for weeks before I make my decision. I intend to make my decision,

if at all possible, right at the conclusion of the case.

So, what I'll do, then, is to read these depositions during the course of the trial so that I have read everything by the day that we conclude, and I'll be able to rule.

MR. GOLDENBERG: That's fine with us, your Honor.

The matter of depositions, I don't know that it's quite as formidable as Mr. Anderson thinks it is at this moment. I'm not too sure that I'm going to offer the Rusch and Harrison depositions.

THE COURT: I would say this, that to the extent that depositions are cumulative of the testimony of Mr. Baer, I wouldn't think that they would be necessary.

Now, to the extent they might contradict what he says, that's a different matter. But I leave that to your judgment.

MR. GOLDENBERG: Yes, and my present plans are not to offer those depositions. The depositions, so that Mr. Anderson might know, that I was thinking of, were the R.C.A. depositions, and then selected portions of various depositions with respect to this game Space War, which perhaps you have become somewhat familiar

with as a result of the discussions in this case, so that's what I'm talking about at this point in time.

And what I will do is to make an effort to winnow down those depositions to put in only evidence where I believe any stipulation that we have with respect to those matters doesn't cover something that I would like the Court to be aware of.

MR. ANDERSON: I wonder if we can try to cross-designate in that event. Say Friday sometime.

MR. GOLDENBERG: I think we can make that effort.

THE COURT: I can take them home over the week-end and read them.

MR. ANDERSON: I might say that on Rusch and Harrison, I believe the testimony either would be cumulative or perhaps corroborative. If, as I sense, there is no real dispute about corroborating the contentions or the testimony there as to dates and events --

MR. GOLDENBERG: I didn't say that, sir.

THE COURT: I think we understand each other. Let's proceed.

MR. ANDERSON: We completed the testimony of Mr. Baer, and we now would like to call Mr. Robert Fritsche to the stand.

MR. GOLDENBERG: Your Honor, at this time I would like to object to the testimony of Mr. Fritsche. Mr. Fritsche's testimony was characterized by Mr. Anderson, I believe, as being concerned with this matter of copying, which the Court has ruled preliminarily it will not receive.

So I repeat my objection in that respect.

MR. ANDERSON: Your Honor, this testimony --

THE COURT: I gave that matter further thought last



night. I am inclined to receive that testimony now, because I think it may very well go to the issue of obviousness, if nothing else. So I am interested in the manner in which Magnavox's competitors acquired their knowledge of the TV game devices.

I will overrule that objection.

MR. GOLDENBERG: I will have to --

THE COURT: You may have a standing objection to materiality.

MR. GOLDENBERG: I understand that, sir.

This poses an additional burden on me with respect to depositions taken in this case, beyond what I said a moment ago.

THE COURT: That is all right. I want counsel to feel free to give me anything to read which you think I should read. I don't mean to be parsimonious about it. I merely am indicating I don't want to have to read anything that isn't really necessary.

ROBERT EDWARD FRITSCH, called as a witness by and on behalf of the plaintiffs herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDERSON:

Q For the record, would you please state your full

name.

A Robert Edward Fritsche.

Q Where do you reside?

A Buffalo Grove.

Q What is your residence address?

A 1367 Mill Creek Drive.

Q By whom are you presently employed?

A Beatrice Foods.

Q What is your position with Beatrice Foods?

A It is director of market planning for the manufacturing division.

Q If you will, speak up a little bit. There's a sort of noise level in the room. Our worthy opponents are having trouble hearing you.

MR. GOLDENBERG: Thank you.

BY MR. ANDERSON:

Q Just in very general terms, what are your duties as -- manufacturing?

A It is in the Manufacturing Division with Beatrice Foods. The position is Director of Market Planning.

I work in market planning as such, as well as new product development for the Manufacturing Division of Beatrice, which is about 43 different manufacturing companies that manufacture consumer durable products.

Q For how long have you held that position?

A Since September 15, 1975.

Q Prior to September 15, 1975, by whom were you employed?

A The Magnavox Company.

Q At that time what was your position with the Magnavox Company?

A It was Product Manager for Odyssey, as well as black and white TV.

Q When did you assume the position of Product

Manager for Odyssey and black and white TV?

A Well, I assumed the product management position for Odyssey back in 1971. I joined the company in November, 1970, worked as a purchasing coordinator for international purchasing, up until, I believe it was, October or September, 1971, when I joined the Marketing Department as a product planner on the Odyssey product. Of course, this was before it was commercially introduced.

Q Generally describe your duties from 1970 until September of 1971, when you referred to the marketing of Odyssey?

A Well, I was hired into the Purchasing Department, and they had just recently, prior to my arrival there, completed a study where they felt they were not taking the maximum advantage of offshore, overseas purchases of semiconductors and electronic components and therefore wanted to concentrate more effort in it, and I joined the company as a purchasing coordinator to help them qualify offshore sources of supply for the various components that the company uses in all of its electronic products.

Q When you transferred to the marketing group and became involved in Odyssey in September of 1971, what was your title at that time?

A It was product planner.

Q When did you become product manager of Odyssey and black and white TV?

A I am trying to think of the official date. It was like January 1973.

Q Prior to joining Magnavox in 1970, will you just briefly trace your employment history?

A Well, after graduating from college, from Miami University in Ohio, in April of 1966, I was commissioned Second Lieutenant in the Air Force in April 1966 and went on active duty in Oklahoma City for three and a half years, beginning September 1966, and I was employed by the United States Air Force until my separation October 1970, and I was separated as a captain.

Q At that time did you join Magnavox?

A Yes, I did.

Q Will you please describe your duties when you first became product planner for Odyssey in 1971?

A Well, the very first thing that happened was that Bob Wiles, who had been heading the project for Magnavox, had just completed a consumer survey out in Los Angeles with a prototype video game that had been supplied and some work had been performed on it by Magnavox.

They were surveying consumers' interest level in the product to try and determine the marketability of the product.

When I joined in September, we were already-- Bob was already laying plans for what subsequently happened in October, and that was that we visited one of our home entertainment centers in a mall in Grand Rapids, Michigan, where we again performed the same kind of survey, and the rationale for the second survey was because the first one was in California, and California, typically, in the marketing vernacular, sometimes gobbles up new product very quickly, and is very progressive in what they will accept, and we wanted a little more conservative viewpoint, and from that viewpoint, Grand Rapids represents a conservative market to test the product against.

We found that the results of that survey were quite like those of Los Angeles.

Q Can you describe the results of the survey that were taken in Los Angeles and in Grand Rapids in terms of the numbers of people involved, generally, and the things that were used as the survey communication means, and then the results that were generated?

A Certainly --

MR. GOLDENBERG: Your Honor, I object to that

question on the grounds of hearsay until some  
foundation --

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THE COURT: I think the first two parts are all right, what they did and how they went about their work, but as to what the results are -- first of all, if there is a document here that incorporates it, we might have a look at that.

MR. ANDERSON: Your Honor, I will hand the Court a set of documents which are Plaintiff's Exhibits 97-H through 97-N, all of the documents that I think will be involved in Mr. Fritsche's testimony, and I have provided the defendant with a set of documents also.

THE COURT: Are those documents that were prepared in the ordinary course of business?

MR. ANDERSON: Yes, I think they are, your Honor.

MR. GOLDENBERG: Well, your Honor, we have never seen the documents until this morning.

THE COURT: Well, let's --

MR. ANDERSON: They were in files that were available, and Mr. Goldenberg did recognize he had seen the files.

THE COURT: Let's do it this way: Let's go ahead and have the witness introduce these docu-

ments as made in the ordinary course of business, and then after they are received, I will let him testify to the contents of the documents. But in the meantime, he can go ahead and describe the way the survey was conducted.

MR. ANDERSON: Your Honor, I do submit that evidence of surveys and the responses of a survey as what was said at that time is proper and admissible and an exception to the hearsay rule.

THE COURT: Well, I would be accepting it for the truth of the responses made by the persons who responded. I wouldn't be accepting it simply for the fact that they said these things. I would be accepting for the fact that, for instance, if they said yes, we would like to play a TV game, I would be accepting it for the truth of that statement. Therefore, I think it is hearsay. But I think the way to get it in is by way of a record made in the ordinary course of business, which is an exception to the hearsay rule.

MR. ANDERSON: All right, thank you, your Honor.

MR. GOLDENBERG: You understand Mr. Anderson's last question to the witness is not how the survey was made or anything like that, but what the results



were?

THE COURT: Well, he started out with what the results were, but then he went on and qualified that by asking the witness to describe how it was conducted.

I will let him describe how it was conducted, and then we will get in to the document.

Then, by way of shorthand, since the documents will be in evidence, presumably, I will let him testify as to what they reflect.

MR. ANDERSON: Fine. Thank you, your Honor.

BY MR. ANDERSON:

Q Then, Mr. Fritsche, if you will, describe the manner in which the surveys were conducted.

A Well, the survey in Grand Rapids, I attended personally, and it was set up such that Magnavox had approximately 250 dealers that are considered home entertainment centers. They sold exclusively the Magnavox line of products, everything from the small radio to the large stereo, TV, etc. And because of that, the particular and peculiar way in which they arrange their stores, they have sound rooms where they can set off specific pieces of equipment they want to show off or promote at a certain time of year, that they want to exhibit to the customers as they come in.

We secured one of those rooms in Tom Williams' Home Entertainment Center in Grand Rapids -- I don't remember the name of the mall, but it's in one of the documents that we have -- but it's a Tom Williams Home Entertainment Center.

We would solicit potential customers that came into the store to examine the various Magnavox products that were there. We were also out on the floor of the mall, and we had the permission of the mall association to do this, to solicit the consumers to come in and view this

game that we had.

At the time, it was the prototype Odyssey, simply displayed on a TV screen, and it did what we all know today, the tennis game, bouncing ball and the lights, the hockey game, a chase game, two squares by themselves.

At the time, we had some very crudely made overlays that were affixed to the TV screens, or could be.

Our idea was to bring the consumers in, particularly families. We, obviously, had some preconceived ideas about who we thought the game would appeal to, and about how broad a base we felt we had to establish for the product to go out as a new venture, because we are not certain of the total new concept, and we are testing this concept with the consumers.

We asked them in one at a time, and off the top of the head, I don't recall how many we got in Grand Rapids, but it is a matter of correspondence at Magnavox. They came in with their families, generally it was a husband, wife, young couple, with a couple of small children, anywhere from 5 to 15 years of age.

We would have them sit down in front of the TV, we would show them this concept, that here is a device that can be hooked to the TV, you can turn it to either channel 3 or 4. We would show how you would insert the game

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cards, illuminate the screen, how you would manipulate the hand controls to move the spots of light across the screen, and then ask them to play it, the tennis game.

Then we would explain to them the various games that they could get with the product, some of them additional sports games, some of them quasi-educational, the Simon Says game for the very small pre-schoolers, some of the other games with a little more thought involved in it, versus total action.

We are trying to test to find out where their interests are, where it really lies. Is it all pointed toward one end, all video action game with the action on the screen, or was it more on the thought games like the board games, Monopoly and many other games Parker Bros. puts out, was it in the educational area?

We were just really trying to test their thoughts. We asked them a series of questions. We had a questionnaire in which we asked them specific questions in a specific order to find out what they did at home. Are you a consumer who uses the game at home? Do you and your family sit down on Saturday nights once a month or at some point in time during a year and play a game such as Monopoly or any of the other popular games? Do you have road racing sets, do you have model railroad sets? We were trying to determine consumers' willingness to buy at certain price levels.

After explaining all of this and finding out something about the consumer, then we would ask them, based on what you see in front of you, realizing it's a prototype, it's not in its finished form, for what it is and what you see it is, what do you think it would cost, and most of the respondents were responding off the cuff as anywhere from \$100 to \$175, and would you be willing to buy the product at \$100 to \$175? Most all of them said yes, they would.

Then we asked them, what if we told you it was available for, say, \$75, would you be willing to buy? Well, without question, I would be.

Well, as anybody knows in surveys such as this, there's a vast difference between a consumer's willingness, obviously, to say in market research that, yes, I will buy, and then actually going to the store and buying, which later, you know, as we introduced the product, we found -- we kept testing that willingness on the part of the consumer as we developed the product and testing it in focus groups such as this, and later found that, indeed, they would.

Q Had you heard of any television game prior to your introduction to Odyssey at Magnavox?

A No, not prior to it, no.

Q In the survey, did any respondent indicate

a knowledge of a game adapted for playing on television in the course of your questionnaires?

A No, not in the Grand Rapids survey, no mention of the fact that another game existed. In fact, that was one of the main things that we found, that we saw as one of our problems that we were going to have the fact that the consumer had no frame of reference for this game, and it set up the situation where we knew we would be pioneering with the product from the point of view of pioneering in trying to structure how the product could be used by the consumer.

To try and explain the game verbally, without visually seeing it, it's quite hard for the consumer to understand and to comprehend what the product is and how he would use it in his home and hook it to his TV. "You mean you have to take the back off and put it inside?" Nobody knew. "No, just hook it to your antenna terminals." It was a difficult concept, and we knew from the very beginning that we were going to have to be very graphic in trying to explain it.

We felt that TV advertising, as an example, was going to be a necessity, versus newspaper advertising, because newspaper advertising is not an active medium such as TV is, something where it had to be demonstrated, how do these lights move across

the screen.

Q I would like you to look at the first exhibit --  
I think you have a set that I laid on the witness stand --  
and specifically Plaintiff's Exhibit 97-H.

A Yes.

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Q Did you receive a copy?

A Yes.

This was the letter that was written by Bob Wiles. It is an interoffice communication to the zone manager, who was over Ward McCardle, who was the regional manager, who was responsible for Magnavox sales to Williams Home Entertainment Center in Grand Rapids, Michigan, where we were going to conduct the survey, and this letter basically outlines the objectives of the survey that we were going to perform, how we were going to perform it, what aids we would need to perform it, such as a specific kind of TV, and a typical room setting situation, where we could have people seated.

Q Attached to the two-page memorandum of Mr. Wiles is a document entitled "Skill-O-Vision Questionnaire."

Would you please look at that and relate that to your testimony about a questionnaire, if you can?

A This is the questionnaire that was used, and specifically the questions, and in every case both Bob Wiles and I attended the Grand Rapids survey, and used this as our guideline to discuss the product concept with the consumer and ask him specific questions so that we were being very meticulous, very structured in the way we asked each of the consumers the same thing in the same



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way. The results of each of those questions, for the number of people, at both Grand Rapids and Los Angeles, were tallied. In fact, I did that. I think that is the next document here, 97-I, which is simply a numerical tabulation. It gives you both the total number of people who responded and the percentages.

Then I combined both of them, both for Grand Rapids as well as California, into a total, and it gave us a net.

We were interested in two facts here: One, how much commonality there was between the results that we received in Los Angeles and that we received in what we felt to be a conservative test market area, which was Grand Rapids, and then, secondly, what was the net result of the two.

I think you can see it was quite interesting. We found it very pertinent to the product, both in what we think is a very liberal progressive market area and also in a very conservative test market area, that the results paralleled one another.

Q Do you presently believe that the summary that you prepared, Plaintiff's Exhibit 97-I, accurately reflects the results of the surveys that were taken in California and Michigan?

A It does, yes.

Q I notice on the first exhibit, Plaintiff's Exhibit 97-H, the subject is designated "Skill-O-Vision". What is "Skill-O-Vision"?

A You know, we never found out what that name came from. But when I first joined the Marketing Department, that is what it was called, Skill-O-Vision. The thought was, I guess -- well, nobody really knows. I don't think it came from Sanders, and we tried to search at one time within the company where it came from. It had a series of names. We had a document in my file there, where we were trying to find the ultimate name, and I think it was about six pages long and four columns of names in each one of them, trying to find those we could use and those we thought most appropriate for the product. That was one of the first names that seemed to follow the product during its development.

Q And the product is the product that became Odyssey?

A Yes, it is.

Q After you conducted the survey in Grand Rapids

in the fall of 1971, will you describe in general what you did in the course of your work thereafter on the Odyssey project?

A After the survey results, after we finished, concluded the survey in October of 1971, there was the final touches that had to be put on the product, the final graphics, the final engineering, the final specifications of the product, which, working -- my title at the time was a product planner, but I functioned in what I think in the industry you would call the product management position, because Bob Wiles was really in charge of the product, his main duties were the color TV line, which was the bread and butter of Magnavox. Therefore, I was spending the bulk of the time making some of the final decisions on the ultimate design of the product, the electronic functions that were in it, the graphics for the cartoning, the advertising, the merchandising and sales promotion for the product.

Q In the course of your work after the survey did you at any time thereafter come across any earlier games for playing interactive games on television receivers?

A After that time -- we introduced the product in May -- we introduced Odyssey in May of 1972 in Las

Vegas. After that introduction -- that introduction, by the way, was just to the Magnavox division managers and regional managers, which are the sales force. We introduced it to them.

I think two days later we had a national press release in New York at the Tavern on the Green, where the product was introduced to the press at that time.

Following that, Magnavox has typically what they call their road shows, where they take their new product line introductions out to the dealers to show them the products. I don't recall how many shows there were that year. Many of them went on simultaneously. There were 16, I think, in the major metropolitan markets, such as Chicago, New York, Detroit, Atlanta and so forth.

I attended the Chicago show, the Atlanta show, the New Orleans show. Of course you couldn't attend them all, because some were at the same time.

Following that introduction, where we would set up -- as an example, in Chicago we had it at Henrici's out near O'Hare. We had it there, and all of the Magnavox dealers would come in some period of time during a three day stay here and would examine all the product line that was there, and of course Odyssey was there.

Fritsche - direct

They would see and view the products, and it was some time following that, I believe something like December of January of 1973 -- it was December of 1972 or January of 1973 -- that our division manager, the zone manager, he was called, Tom Garvin, called me from California and said that following his zone show one of his dealers, after seeing the Odyssey, and I believe it was a couple of months after his show was over with, had concluded -- he said he had seen a coin-operated video game --

MR. GOLDENBERG: Your Honor, this clearly --

THE COURT: Yes. That will be sustained, that objection.

MR. GOLDENBERG: Thank you, your Honor.

That was hearsay, Mr. Anderson.

THE COURT: The statement will be stricken.

BY MR. ANDERSON:

Q In the course of the shows that were attended by dealers, that you attended, and your further work at the time of the introduction, did you learn of any prior existing equipment for playing interactive games on television receivers?

A No, I did not.

Q Did anyone ever discuss with you the history of

television games as it existed in 1972 when the game was introduced?

A I am not sure I understand the question.

Q Was there any discussion that you personally were involved in that would have indicated either that television games for use interactively on television sets were either known or in existence or not know or in existence prior to the introduction of Odyssey?

A All the discussions that I have had with any knowledgeable sources inside Magnavox, through Sanders Associates, there was no knowledge of any pre-existing game prior to the Odyssey game which started out under development as Skill-O-Vision in Magnavox. That is to my knowledge.

The first I ever became aware of another game existing was sometime in early, very early. like January 1973. The first game that I became aware of was a game called Pong, which I noticed as I came in here -- well, the model I know of looks very much like the model sitting here in the courtroom today.

Q That is Plaintiffs' Exhibit 10, which is the label on this yellow-fronted game?

A Yes. That is the first game I became aware of, and even before I became aware of the physical model itself, I had read an article, a small article, in a

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Los Angeles newspaper, that had been forwarded to me by the zone manager out there, describing a game, this game, that was in some bars and pubs, and it cost a quarter to play.

Q Did Magnavox have any meetings that you attended or were aware of with respect to how the product might be marketed, through what channels of trade?

A Well, in initially marketing the product, our production was going to be very limited. We made the observation that Odyssey is going to be a very seasonal product, sold at Christmas time. I think you will still find that true today. We knew it would be highly season-oriented the first year. We had introduced the product in May, shown it to our sales force, so that they in turn could show it to the dealers to get them geared up to make the purchases necessary.

We were gearing our production to produce the product so that we could commence shipping in September, which is a little late for shipping product for a Christmas season. But it can be done.

The enthusiasm was there, both on the part of Magnavox and on the part of the dealers, to receive it and display the product.

Because of the limited production, when

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I first joined Odyssey, the forecasts of Bob Wiles and the others who were in charge were that they were forecasting to produce -- that it had the capability to produce only 50,000 units that first Christmas season, September through December. I became very concerned about that after I joined the product, because I felt, because of the survey results, the responses we had, the acceptance that was so significant from the dealers, the major dealers, that we should up the quantity. I wanted to up it to 100,000 units for the first Christmas season.

Nevertheless, with the quantity we knew we could produce, Magnavox knew that the product volume would be limited for our dealers, because we have a very good franchise and working arrangement with all of our dealers, and we didn't want to put ourselves in the jeopardy position that indeed, if the product sales really skyrocketed, that we can't supply anybody.

So rather than gambling that that will happen, we'll gamble that if the worst happens, we will have some in the warehouse. By that I mean we limited the initial distribution of the product to -- originally it was to be 18 major markets. The way that was calculated, we had 18 sales territories or zones in the United States, and we took the top ten metropolitan markets, found out



which ones, which zones, those fell in, and any zones that didn't have a major metropolitan market, we found the major metropolitan market for that zone and identified it as one of the first cities from which those dealers would be eligible to receive the product to sell it the first year.

Q Are they the only markets, then, that Magnavox offered Odyssey for that first 1972 season to?

A Originally, but because of a lot of internal pressure to try and up and quantity availability for that beginning Christmas season the company expended a considerable amount of money in double tooling the product, meaning a lot of hard core steel tools to produce extra product. That was going to be our initial limitation.

With that, we were then able to expand it to five additional markets. We ended up with a total of 23. I guess we ended up with 25. So we must have gone 7, but we ended up with 25 markets for that fall season.

Q Approximately how many units were actually sold by Magnavox during that 1972 Christmas season?

A 1972 we shipped 89,000 units to our dealers, and that was from the time we began shipping in -- it was mid-September, 1972 through December.

Q Did you at Magnavox receive by any marketing means any responses to the sale of these initial Odyssey games?

A Yes, indeed. We were very concerned, as we were, to do the front end research. I saw the need to keep in some kind of constant contact with those con-

sumers.

Even though we thought we had the demographics of the people who potentially would be in the market to buy, now that we were selling, I wanted to find out, wanted to close that gap between those who in a survey said, "Gee, I think I would buy" and I wanted to find out from those who bought how closely they paralleled the demographics of those who said they would buy. Therefore, I included with the product a card that looked like a little IBM card, that was called a Consumer Registration Product Information Card. From the card we were basically trying to find out some basic information about the consumer, his age, family size, and also asking him the question, would he be willing to receive additional information about the product as it became available and as we developed the product on into the future.

To get as many responses back as possible, we offered free additional game that we would mail the consumer for returning the card. We received back a considerable number of them. I summarized the responses from many of the cards that we received back. It is a document that you have marked 97-J, which was a letter I wrote November 28, 1972.

Q Before addressing yourself to Plaintiff's

Exhibit 97-J, Mr. Fritzsche, you said that as an incentive to return the card Magnavox gave a free additional game. Do you mean another Odyssey?

A No. It was an additional optional game.

When we introduced the product, Odyssey, the model 1TL200 came with 12 games complete. We also marketed at the time six optional additional games that could be purchased by the consumer for \$5.95.

We had an additional game called Percepts, which we retained back. It was not marketed. It was used exclusively as a game to be sent in fulfillment for those consumers who filled out the card and mailed it back to us.

Q Was the additional game primarily a printed circuit card that was plugged into the existing Odyssey that the customer purchased?

A Primarily a printed circuit card. Also a game overlay and any of the game accessories, such as decks of cards, dice, tokens, whatever else was necessary, the elements to play that game.

Q Would you refer to Plaintiff's Exhibit 97-J? Did you personally prepare that document?

A I did.

Q Will you state what the inputs were to that document?

A The inputs --

MR. GOLDENBERG: Your Honor, I object to this question, particularly with respect to this document, which certainly is being offered to prove the truth of the statements which appear in the document.

I think it is particularly suspect, if you will, by virtue of the witness' testimony that the purchaser of these games was offered an inducement to write to the company and to fill out this card and take some kind of action, and I think as much as anything else it has so little probative value that here really the hear-

say quality of the document should be the determining factor on its admissibility.

THE COURT: Well, I think your objection goes to the weight of it rather than the admissibility, and I will overrule the objection.

BY MR. ANDERSON:

Q Will you please, Mr. Fritsche, go ahead and answer my question concerning how the information for the document was accumulated?

A Well, if I could state a little preamble to the answer to that, this document was prepared by myself, and it was directed, as you can see, to Jerry Martin, who was the marketing vice president at the time, and being the product manager for Odyssey, I was simply trying to apprise him of the inputs that we were receiving. We were receiving them in many fashions. One was obviously the consumer registration card, which, as you glance down in the body of this, you will see at the end of some of those statements as "CR Number 21". That means a Consumer Registration card.

This is one of the cards that was included with the product.

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There are some down near the bottom of the first page which are marked at the end "CQ," Consumer Questionnaire, which is a second element.

After the product had been out in the marketplace, based upon the names and addresses of those that we had received sending the cards back in, we selected at random 1,500 of those names and mailed them a follow-up questionnaire to ask them, now that the product is in your home, you know, what's your satisfaction level with the product, are you as satisfied as you were when you first purchased the Odyssey, are you as satisfied now as you thought you were when -- before you purchased it?

These are some random responses. The questionnaires were closed end, they weren't open end questions. They were all closed end.

They could be answered with a yes, a no, or a checking of a box, okay? So, therefore, any responses that we got were volunteered on the part of the respondent, whether it be on the consumer registration card or the consumer questionnaire card.

Over on page 2 are some unsolicited letters written by consumers, which I summarized. These were mailed in to Magnavox, saying, I purchased Odyssey -- I don't know whether you want me to go through some of them

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and give you an example -- "Many thanks to Magnavox for Odyssey, an outstanding contribution to family home entertainment," etc. Many of them are like that. Those are letters tha came in, we didn't solicit, they came in to Magnavox.

Following that, I think of significance and of interest were some of the unique uses of the product, which is at the lower part of the second page. I will just randomly pick a couple and summarize them very quickly.

One was the Los Angeles Air Traffic Controllers, which personally called me on the phone to discuss the possibilities of adjusting the player size. They wanted to use Odyssey, I found, following the conversation, they wanted to use Odyssey as an aid device for the Air Traffic Control Training Center in Los Angeles. They would shrink the size of the light, put it on a monitor, and a gentleman could control it from a remote room, maneuvering the light around, simulating the flight of an aircraft, which the controller would have to try and control through the traffic pattern.

Our engineering department did assist them with the technical information they needed to adjust that.

There was another one I thought very



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interesting. The Veteran's Administration in New York, their Bioengineering Research Service, called to say how they were using Odyssey, and they were using it with the quadriplegic patients. These are the patients that are immobile from the neck down. They have chin and neck braces that they use to manipulate aids for themselves. They had adopted an Odyssey hand control unit so that as the patient would move his chin forward and backward, or his head side to side, he would move the light on the screen, and behind his head they had a micro-switch which was used to activate the ball in the ping pong game.

Q Now, I note at the last page, page 3, reference to 190 responses. What responses are you referring to there, and was that all of the responses?

A No. As you will note -- I mailed the consumer questionnaire, the follow-up questionnaire, out. The unsolicited questionnaire offered no inducement to consumer to return it, except our crossed fingers and hopes and prayers, and they, indeed, did return it.

We mailed out 1,500 of them on November 14th, and by November 28th, I had received back approximately 190, 190 of the responses, and was summarizing some of the comments from there that are summarized in this letter

for Jerry Martin.

Ultimately, out of that questionnaire,  
we received back approximately 900 responses out of the  
1,500 that we mailed out.

Q Of the responses that you received, were any of them adverse or negative to Odyssey?

A No. In fact, I -- our purpose for that questionnaire, as I had said before, was to determine their -- the consumers' attitudes about the product now that they have it in the form. They have, in essence, bellied up to the bar and said, "I'm going to buy." And they bought. They have got it. How satisfied is their family with it? The most important question to us was the last question, and it asked, "Now that you have Odyssey in your home and are now using it, how satisfied are you with that purchase, very satisfied, somewhat satisfied, somewhat unsatisfied, very unsatisfied"?

I recall them, because we used the statistics quite often in the company with the other departments in informing them about the product. 88 per cent of the responses of those 900 people responded either somewhat like or very much liked.

I remember the only total negative responses we had, and I believe I'm almost positive the number was 6, in every case the reason they checked "Very unsatisfied" was because they knew that it would catch our attention, if our market is very unsatisfied, that people back there at Magnavox are going to read this. And when I read it, they were a very favorable

response, they were saying, "I knew it would get your attention," and would go on to explain how they were using the product, or what they liked about it, so on.

Q I would like you to refer to Plaintiff's Exhibit 97-K, the next exhibit in the collection, and explain, if you will, what that document shows?

A Well, it's --

Q First of all, are you familiar with the document from your time at Magnavox?

A I am only familiar with it as it surrounds some direct involvement I had with Seeburg in conjunction with Mr. Surette.

Q Is this 97-K? Maybe I didn't give you a 97-K.

A No, wrong number.

I have got it now.

Q It's the longhand tabulation, Mr. Fritsche.

A Right. This document was prepared through the efforts of both myself and our market research man, Mr. Milt Wiegel, at Magnavox. This is where we were determining -- as I mentioned previously, we initially introduced Odyssey in our 18 zones limited market distribution. We were trying to determine now if we were going to sell it in 18 markets, what kind of allocation of the product can we give to each of the sales markets.

We determined that based upon some of the results from our earlier surveys which said the most likely consumer is at a certain age and income level, he has black and white TV, he has a color TV, and his color TV is a certain screen size -- based upon that kind of criteria, we examined the standard metropolitan markets as prepared and presented by sales management, which helped us determine the potentials of each market, and the market with the most potential for sales got the most allocation of the products that would be made available that fall.

This simply details -- the last column, column 2 over here is the allocation of the Odyssey units that were going to be made available to each of the markets.

Q And while the print is not too good, the bottom of that column 2 appears to read 100,000, is that correct?

A That's correct.

Q After the 1972 Christmas market, Mr. Fritsche, are you familiar with the sales of Odyssey in subsequent years?

A Yes. Our sales were 89,000 units in '72, the Christmas season, okay? Full calendar year of '73 was-- I believe that one was 89,000 units.

1974 was approximately 129,000 units.

And then I was with Magnavox in 1975 from January through September. Our sales target for that year was 210,000 units. I left in September. We were rapidly approaching that, and I'm certain that they surpassed that for the year.

Q Now, in subsequent marketing, was Odyssey marketed other than through Magnavox home entertainment centers?

A No, that was a marketing advantage and a marketing strategy that the senior vice president of the company elected to take with the product from the very beginning. Magnavox was the first company to introduce a video game, to put it on the market, first availability. It was a strategy he wanted to use in drawing consumers

to the Magnavox store, to the Magnavox dealers, to Magnavox products, other products.

In the first year Odyssey was used -- was sold throughout the Magnavox distribution, but, from my perspective, as the market manager, I would have liked to see a little wider distribution for the product. As we gained capacity to expand it, I would have liked to see it expanded, but it was their election, and they are the ones that had the ultimate responsibility of limited distribution.

Q Have you considered the proposition of marketing through department stores?

A Oh, yes. Obviously, a lot of major department stores in the United States are already part of the Magnavox distribution.

If maybe you are suggesting out side of that, yes. Outside of that were some mass merchants, people who can give the product some mass exposure.

As I discussed earlier this morning, Odyssey, the first couple of years, or three years, was really a pioneering effort in just trying to expose the product to the consumer so that he could get a frame of reference of what it is and how it works and how is it going to work in his home.

Q Did Magnavox ever consider manufacturing a

coin-operated TV game?

A Yes, they did.

Q And how did that come about, or how did that consideration arise?

A Well, the first I was aware of it was through Bill Surette, who I was working for, and this was in January of 1973. I reported to him, and his offices were in New York. He explained to me that he had been approached -- I'm not certain by whom -- whether it was through a broker or directly by Seeburg -- but he had had a contact with them, and by the time he contacted -- Bill Surette contacted me, he had already been in contact with Seeburg, and was arranging a meeting, through me, at Fort Wayne, at our corporate headquarters, to review a product which Seeburg was mailing to us, and that's what this product that's sitting here in the courtroom, the Pong. The unit we had was identical to that.

Q That's Plaintiff's Exhibit 10?

A Right. That was in our engineering lab and was the product that we used to form our initial discussions with Seeburg, and this was -- I could be wrong on the month -- but it was January or February, 1973.

Q Mr. Fritsche, please refer to Plaintiff's



Exhibits 97-L and 97-M, and see if that refreshes your recollection as to the date or approximate date.

A Well, as I say, the first document, 97-L, after reading it, I am familiar with the circumstances. I was not familiar with this letter, which my observation is it comes from a finder who has some correspondence with Magnavox, and I suspect this is how Bill Surette became aware of the potential arrangement that could be made.

Q Now, you indicated that Seeburg shipped a Pong game to Magnavox in Fort Wayne?

A Yes.

Q Now, when did that occur in the total relationship with -- between Magnavox and Seeburg?

A It had to -- we received that game in January or February, 1973, because I wrote a letter on March 13, 1973 to our engineering, our design, and our financial people in Magnavox, asking them to assist me in an analysis of Magnavox producing a coin-operated video game for Seeburg, and that's the substance of the letter which is Exhibit 97-M.

Q And I think you said that after Magnavox received the pong game from Seeburg, representatives of Seeburg came to Fort Wayne for a meeting that you attended?

A Yes, yes. They used this game as their talking piece, to explain, first of all, who Seeburg was, how they were positioned in their industry, and they felt -- they characterized themselves --

THE COURT: Let's have a few more details on this conversation, who was there, and who was doing the talking.

BY MR. ANDERSON:

Q All right. Was this the first meeting when these people came to Magnavox that you --

A It was the first meeting that I was aware of. There could possibly have been another meeting with Bill Surette in New York that I would not be aware of, and I don't recall one happening. I believe this meeting that I had was the first one, and I was there, Dick Waring, who was the head of the engineering group for Odyssey was there, and I do not recall the gentleman's name from Seeburg, I just -- I don't recall what his name was.

Q Was there only one gentleman from Seeburg?

A Yes.

Q Or more than one?

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A Just one.

Q And at the time of that meeting in Fort Wayne, attended by the gentleman from Seeburg, was the pong game in Fort Wayne?

A Yes, it was, it was in the engineering lab, the meeting was held in the engineering lab for Odyssey, and, as I say, it was used as the talking piece by the Seeburg representative.

Q All right, and then, if you can, relate, in as much detail as you presently can, the entire events of that meeting, in other words, how it started, and who said what to whom, and how it ended?

A Well, primarily, it was a Seeburg representative saying to us -- he was positioning himself, and positioning Seeburg, as to who they were, where they stood in their business, and also the fact that the reason they were coming to Magnavox was that this game was by an outfit -- or a company out in California, had just entered the market-place, it was a very, very poor, crude example of a product that would be insufficient in the coin-operated market, and it was totally inadequate for the market, and he commenced to explain why, how the construction is not adequate, etc., etc.

We went through all the details how it

could be jimmied, the back could be taken off, the safety hazards, and all the parameters that that product -- it looked pretty to us, but to him, he tore it to ribbons.

He also indicated at the time that the reason he was at Magnavox was, one, Seeburg was aware of some patents that surrounded Odyssey, and that Magnavox was the exclusive licensee for them.

Secondly, he told me that he knows Magnavox and Seeburg's position was -- his position was that Magnavox is a quality manufacturer of TV, stereos, etc., that they have been known in the industry to product quality, furniture pieces out of wood. Therefore, he concluded that if we can make quality products, and we are a quality house, that we can make a quality cabinet for a video game, because we also make the video games. Therefore, he was asking for us to consider how we could make a video game like this one for Seeburg.

He expressed concern, as I had concern all along, eventually, as the coin-operated games grew, in the direction that they were going. It's a virgin territory, it's a virgin product, and it needed to have a little protection around it.

A lot of people, in trying to gain as much money today out of it, in my opinion, can jeopardize the

future of the product, and one of the things Magnavox was trying to do was trying to insure and instill some discipline in product development that would help insure the natural future growth of video gaming.

Q All right, now, you have indicated that he explained that they wanted a game like pong, but that the particular physical construction had drawbacks and insufficiencies, is that correct?

A Yes.

MR. GOLDENBERG: Excuse me.

THE COURT: Mr. Goldenberg?

MR. GOLDENBERG: I object to that. I don't believe that the witness testified as Mr. Anderson characterized, that they wanted a game like pong. If he said that, I missed it, and I withdraw the objection, but --

THE COURT: Well, I will sustain the objection, and perhaps you can rephrase your question.

MR. ANDERSON: Certainly.

BY MR. ANDERSON:

Q Mr. Fritsche, you have indicated Seeburg sent this pong game, Plaintiffs' Exhibit 10, or a game just like that, down to Magnavox, is that correct?

A That's right.

Q And you explained that this gentleman from Seeburg

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came down and he explained deficiencies that he saw in the pong game.

Now, did he indicate why he sent the game down and why he was pointing out the deficiencies to you?

A Yes.

Q Will you explain that?

A He sent the game down because he wanted us to see precisely what was on the market. Visually, he wanted what's right there.

Q When you say "visually" --

A I mean visually in every respect, the wood cabinet and the electronics, the way it worked, the game it played.

However, he qualified all of those by saying that cabinet in no way meets the quality standards of Seeburg. It must have a kickplate on the front. This does not. Visually, it looks like a game that they would-- they could put out. Maybe I am characterizing their quality image for them, but all he was saying is I want a product that's like that, but there are certain things you have to do. You have to put quarter rounds on the back so the man who hauls this to the bowling alley or bar or airport can slide it in and out of his station wagon, because that's how he hauls it to that location.

Q Now, one of the things you said he said he wanted was a game that had the same play. Now, did you discuss exactly what that meant, and, if so, what was that?

A Yes, very definitely. It's the tennis game, the two players with the ball.

Q And after he had explained that much, then what happened next during that meeting?

A He discussed the nitty gritty's of the product and the kinds of changes he felt were necessary to be incorporated that we would have to consider in our proposal back to them in terms of the quality of the product, the quality and the appearance of the final cabinet and of the electronics of the game.

He also suggested at that time that we ought to be looking at games -- some of the other Odyssey games that already existed in our Model 1TL 200, could they, indeed, be adapted for coin-operated play, and he set out some parameters that they had to play from start to conclusion in one and a half to two minutes maximum, because the whole concept of that product is a quarter as quickly as you can get a quarter, so, therefore, the games cannot be protracted as the Odyssey games were that we were selling as a home game. Two different concepts totally.

THE COURT: Did he have any adverse criticism of the electronics of the Pong machine as opposed to the cosmetic features of it?

THE WITNESS: Electronics, yes. When he took the back off, a lot of exposed -- in this product, there were a lot of exposed electronics that he felt access from the outside was too easy, somebody could get back inside it, could get hurt on it. It was not constructed well inside to catch the money. They had a little pie tin that you can buy in a 5 and 10 store, instead of a coin box that Seeburg and others are used to installing on their products.

THE COURT: What about the circuitry?

THE WITNESS: The circuitry -- I don't believe, my recollection says, that they knew that much about it. It looked huge to them. The circuitry had some parts missing, and this, that and the other. I don't recall, Judge, that he had really any -- could get very specific about the electronics, because I don't think he was electronically qualified. I think he left that to Magnavox, because -- just his own admission that, "You guys originated it, you guys are electronics engineers, this is TV-oriented, video-oriented, you know, you will



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"have to show me what it can or can't do."

BY MR. ANDERSON:

Q Insofar as the electronics and how they just work to play the game, did he discuss that aspect of the electronics as it related to playing the game?

A Yes, he wanted the same game that he saw played here, and that's a tennis game. One knob. It has to be very, very brief, very quick. Instructions have to be very, very quick for the game. 70 per cent of it has to be observed as you drop the quarter in as to what it is you have to do, so that you don't have to sit there and, while the game is running, start thinking about how do I play this game now, and when I turn this knob, it does this, that or the other.

He felt versus our home game, where we have several controls to manipulate, each player, he was satisfied with one control for the player, which was just a vertical movement, couldn't complicate the game, because it had to be completed within two minutes of play.

Q All right, and then what happened? Was there any more conversation that you can now recall at that meeting, and how did it end?

A Well, it ended that we would examine all of the specifications that he left with us, and all of

those were verbal, examine all the specifications. We would examine internally our capability to do it, which I felt certain we could, and we would come back to him with a proposal.

The Exhibit 97-M, as I indicated previously, was my letter to the head of the video engineering department at Magnavox. It was to Whitey Welbaum, who is the head of the industrial design department, and Homer Haag, who was in charge of the financial costing for all products, and I was asking them, through the course of this letter, I was laying out the parameters that we had received during our discussions with Seeburg, how we could put the product together. I needed to determine a cost.

Of course, prior to him coming in, just examining the Pong, we tried to duplicate that in our own minds. If I put in the same kind of TV that is there out of Magnavox' stock, what would it cost me? If we made a cabinet such as that, and they were quick and dirty costs, and we wanted to clean those up.

We wanted to get more specific, more detailed, because in a company such as Magnavox, the size they were, \$300 million sales, you have to prove your point before the company is going to invest any risk capital. You have to prove that you can return some money, and this letter was to try to document our capability to return a profit to the company.

Q Then what happened after the meeting? Were there any further meetings that you know of between Seeburg and Magnavox?

A Yes. I had a meeting following that in New York with Bill Surette in the offices of Seeburg, where we again discussed this potential program in generalities.

It was at that meeting that it was suggested that we meet with the operation type people of Seeburg, who were in a subsidiary company of theirs, and I don't know quite the organizational structure they had, but it is Williams Electric, I believe, in

Chicago. Three of their people came to Fort Wayne following our New York meeting, and we sat at a table in our demonstration room. It was the three people from Seeburg-Williams Electric, myself and our engineer with our own verbal results of this proposal, which is embodied in this letter of March 13th, discussing the kinds of games that they felt they had to have, and it was at that time I was trying to determine, "Now that we know how many we can produce and what it is going to cost us, what is Williams' or Seeburg's willingness to commit to the product?"

That is when it was explained to me that in the video game market, for any new game that comes on the market, there is a market potential of about 30,000 units. The first company to introduce a specific type of game can generally garner, oh, 8,000 to 12,000 of that total 30,000 capability. The rest, because of the typical structure of that coin-operated business, it is such that there are a lot of copiers, and the copiers will be out there just as quickly with their new games.

Most of that was talked about in the frame of reference of pinball games, where they are basically all the same. The game format changes a little bit, but it is still basically a pinball game.

The video games represented an area that Williams Electric people had indicated they thought had a significant amount of potential for the future, but that it had to be structured properly, and I wholeheartedly agreed with that, in terms of the kinds of games that would be played on it, the way in which they were produced, and the way in which they could be sold to their distribution to get them marketed out into the various locations where they are used.

At that time was when they indicated to me their willingness to back up commitment to Magnavox with like 1,000 to 2,000 units, which just is not satisfactory at all. It is just simply not satisfactory for us to take some of our facilities at Magnavox, redirect them from mainline products to a secondary product venture -- at that time -- for which we didn't feel Magnavox, nor Seeburg, nor any of the other people who were starting to enter the market at that time, were giving the proper front end marketing planning and strategy to developing the products for the marketplace.

THE COURT: Did you say one thousand or two thousand?

THE WITNESS: One thousand to two thousand is about all we got in the way of a commitment.

BY MR. ANDERSON:

Q Did Magnavox at that meeting or at any other time indicate to Seeburg what Magnavox considered to be a minimum quantity to justify going into this?

A Yes. I did at that meeting. And I said 5,000 units were a minimum. I think I was probably skating a little bit, also, in that I think my superiors probably would have liked 8,000 units.

Q What happened at that meeting after that? Is there anything else that you can recall?

A I don't recall the specifics, but after that I had no more further contact with Seeburg, nor with Williams, and subsequently negotiations just dissolved. No more contacts were had between the two companies to my knowledge.

Q Do you know whether Seeburg after that did come out with a video or TV game?

A Yes. They did.

Q Do you know whether it was the tennis game or some other game they came out with?

A I believe it was the tennis game. It wasn't quite like this (indicating), because I think it was a four-player unit, which is simply two players on either side. It is four of those controls instead of two.

Q Mr. Fritsche, I would like you to again look at the exhibits that I have laid before you, Magnavox or Plaintiffs' Exhibits 97-H through -M, and I ask were these exhibits from Magnavox business records?

A Yes, they were.

Q And were they, to the best of your knowledge, generated at about the dates they bear?

A Yes.

Q How were they maintained at Magnavox, to the best of your knowledge?

A I think as in most companies, the originator of the memo keeps a copy, and each of the recipients keeps a copy. In my case any of these I created I also had a chronological file, in which a duplicate copy was maintained in the chronological order of the date I had the letter dictated.

Q Was that technique of maintaining records a regular practice at Magnavox?

A Yes.

Q Were the documents that are now Plaintiffs'

Exhibit 97-H through -M maintained by Magnavox in the regular course of their business, go the best of your knowledge?

A To the best of my knowledge, they were, yes.

MR. ANDERSON: No further direct examination.

THE COURT: We will take a short recess, about ten minutes.

(There was a short recess, after which the following further proceedings were had herein:)



THE COURT: Proceed.

MR. ANDERSON: Your Honor, during the break I discussed this particular Pong game, Plaintiff's Exhibit 10, with Mr. Goldenberg and represented to him on my own behalf that this is the only such game that Magnavox had and that it did come from Magnavox, and I believe he will stipulate that the one the witness was talking about is Plaintiff's Exhibit 10 in the courtroom.

THE COURT: I understood they already had one, and one came by mail. Did I misunderstand?

THE WITNESS: There was only one, your Honor, and it was the one that was mailed in.

MR. ANDERSON: Mr. Williams has pointed out to me that you did not say yes.

MR. GOLDENBERG: I am sorry. I intended to say yes.

THE COURT: That is stipulated, then.

So that the record will indicate what they are talking about, does that Pong game have an exhibit number on it?

MR. ANDERSON: Plaintiff's Exhibit 10, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

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BY MR. GOLDENBERG:

Q Mr. Fritsche, what was your degree at Miami University?

A It was a Bachelor of Science degree, and my major was in marketing.

Q What kind of work did you do in the Air Force?

A When I first entered the Air Force I was a logistics officer for three and a half years. As my last assignment, in Washington, D.C., it was logistics staff officer with the Air Force Technical Applications Center.

Q Could you tell me what a Home Entertainment Center is?

A Home Entertainment Center? I suspect that is in regard to the Magnavox I mentioned earlier, the Magnavox Home Entertainment Center.

Q Yes.

A Home Entertainment Center, when I was with Magnavox at that time, was approximately 250 stores that exclusively sell consumer electronic home entertainment devices. That is all kinds of entertainment devices, such as radios, stereo, television, from a price range of \$9.95 for a pocket radio up to a \$2,000 armoire, which includes a 25-inch color TV, stereo,

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tape system.

They market all of those products for Magnavox; they sell exclusively Magnavox products. Magnavox manufactures a product that covers the spectrum from the \$9.95 pocket radio, and sells from a \$9.95 radio to a \$2,000 armoire.

Q These are Magnavox dealers?

A That's right.

Q They don't sell anything other than Magnavox products?

A They didn't. They do today.

Q In 1971 these surveys were being taken, is that correct?

A Right.

Q They were exclusively Magnavox products?

A Right. A survey was conducted at a Magnavox exclusive Home Entertainment Center dealer.

Q Anyone going into such places would be a Magnavox customer, prospective customer for Magnavox products, wouldn't they?

A I would assume they potentially could be, yes.

Q Nobody has to go in there, would they?

A Certainly. In my opinion, yes, just as I would go into a lot of stores that I may not have any interest in purchasing a specific product of that company. As an example, I visit a Ford dealer, and I don't

own a Ford and never would, and so forth.

Q I am sorry. I do want to understand your answer. You would agree that someone going in there would either have been a Magnavox customer or be interested in purchasing a Magnavox product.

A I would think it would be highly likely, yes, for those who first came into the store. But that wasn't the total of the respondents we got. We did go out into the mall area and solicit respondents from there, and then in turn brought them inside the store to view the models that we had.

Q Was that true of the California survey also?

A I can't speak about that one. I was not in the marketing department at the time that was conducted. It was my understanding from my supervisor, Bob Wiles, who was with me in Grand Rapids, that it was conducted precisely the same way. It was in -- I don't even recall the name. I would if you gave me five minutes. The name of the Home Entertainment Center in Los Angeles, one of our largest, and I don't recall the name.

Q I show you a document which the plaintiff earlier had identified as their Exhibit 97-A. I only have one copy, because that is all we had.

I direct your attention to that exhibit 97-A and ask you if you ever have seen it before?

A Yes, I have.

Q Is that a document from the files of Magnavox, as far as you know?

A Yes.

Q I direct your attention to the bottom paragraph on the first page.

A Where?

Q The bottom paragraph.

Could you read that, please?

A Yes.

Fritsche - cross

"Referring to our San Diego discussion, Ken Crane has consented to let us use one of his locations. We selected a HEC for the initial test for confidential reasons as opposed to a mall, as an example."

Q Does "HEC" stand for Home Entertainment Center, as far as you know?

A That's correct.

Q Would you agree with me that by conducting this survey in such a location as that you already have excluded a certain cross section of the public?

A It is only theory on my part, because, as I say, I wasn't with it, with the product, you know, the Marketing Department, when that was conducted. Knowing Bob Wiles, what is intended there, I think, maybe is not quite as explicit as the word, and that is this product was held in top secret throughout its development in Magnavox. We did not want anybody outside to know it, for a competitive edge. Therefore, I could only suppose that Bob was saying, as opposed to the various kinds of ways I could go out and test consumer response, I would rather know that I am testing in an environment in which I can control the amount of outside exposure versus walking into a large shopping mall and exposing it to anybody and everybody that walked along, which could indeed be a potential competitor.

Q So those conducting the survey were not interested in a scientific sample of the public, were they?

A Well, you have to understand the difference between the kinds of surveys. This was a qualitative survey, not a quantitative survey. A qualitative survey is to determine those quality elements about the product versus how many people. Okay?

That is what this type of survey was conducted for, both of them in fact.

Q I see, sir. So we can attach no significance to the numbers which appear in the survey?

A No. To the contrary. There is significance to the number of people in a focus group, and this is conducted much like a focus group, and many research houses right here in Chicago, and at Beatrice we use many of them, conduct them, and the numbers are important. The numbers on the qualitative questions that are there cannot be extrapolated. On the specific demographic questions, it can indeed be extrapolated.

Q You will have to bear with me. I am not well versed in surveys. Let me see if I understand you.

You are saying that in terms of the various percentages reported with the demographic information, those numbers have significance. Those numbers can be

extrapolated to the population as a whole.

A Absolutely.

Q The numbers which appear as to preference or likes or dislikes, those numbers cannot be extrapolated.

A No. They only give you an indication. As an example, out of ten people who say, "Yes, I like your product very much," only eight reply, "Yes, I like it very much."

I read that as a user of those kinds of statistics to tell me that there seems to be a strong indication of its acceptance by them. I would not preclude or conclude, rather, from that, that eight out of ten said they would buy it, therefore 80 percent of the people with those demographics would buy it, no. It is not that kind of survey.



Q I show you Plaintiff's Exhibit 97-H, and direct your attention to the questionnaire, which is a part of that exhibit, and question number 4 reads: "Question omitted."

What was question number 4?

A I don't recall. I really don't. Since it was one -- this is the same survey questionnaire that was used by Bob Wiles out in California, and when I came aboard in September, this one was prepared, and I did know at one time, and I really don't know what it was now.

Q Did he omit question 4 also?

A Yes. Obviously it was omitted in Michigan. I have to assume that a question 4 was there out in California. At this point in time, today, I just can't recall what that was, and that indeed it was in the California survey.

Q Now, sir, in the conduct of this survey I believe you testified that in talking to those surveyed you asked them whether or not, for instance, they would be willing to pay the \$175 for such a unit.

A Right.

Q Then I think you also testified that the questionnaire was followed rigorously in the conduct of the survey, is that correct?

A That's correct.

Q Would you look at question 9?

A Yes.

Q I read that as follows:

"Would you buy this new product if it were offered for sale at \$75?"

I don't see anything there about \$175.

A Right. There is not. And that of all the questions was the only question that in Michigan, and we were there, and if memory serves me correctly, we were there three days -- the first day this was followed verbatim. The second and third days it was followed verbatim, except on question number 9.

At my encouragement, I asked Bob that when we interviewed and went through question 9, instead of saying and tipping our hand as to the price, I would be interested in determining the consumer's perceived value of the product unaided.

Therefore, "What would you expect to pay for this product?"

And there is where we got our responses consistently at anywhere from \$100 to \$175.

My recollection is that it was around \$150, because I was most impressed with the kind of response that we got the last two days. However, we

closed that open-ended question by saying, "Would you then buy this product if it were offered for sale at \$75?"

Q This is after asking if they would pay --

A No. I didn't ask them if they would pay anything. I said, "I have just showed you a game. I have demonstrated it to you. You have played with it. You see the games that are with it. What would you expect to pay for that game?"

Q I am sorry. Who mentioned \$175?

A The respondent.

Q They did?

A They did.

Q I see, sir. Then you treated every \$175 response as a \$75 response?

A I turned around after they said that, and then I went right back to the questionnaire and said, "Would you buy this new product if it were offered for sale at \$75?"

The answers were yes or no. If no, "What price do you think the product should sell for?"

I went right back to the questionnaire and followed it verbatim.

Q The first Odyssey game sold was the ITL 200, is that correct?

A It is a 1TL 200.

Q 1TL 200? Is there any significance to that product identification as describing the game, or is that just some numbering system decided upon?

A The model number is a 1TL 200, and it is strictly in accordance with allocations of acceptable numbers within the company from manufacturing and stocking, dealership organization point of view.

Q Do you have any familiarity with the electrical circuitry of the 1TL 200?

A I have a layman's view of the electronics. What it basically did and how it basically worked. I was called upon probably hundreds of times to make demonstrations of the product before all kinds of audiences, and when I found very early on that I was asked many times what magic produces this thing on my TV screen, I soon had to come up with an answer, and that is when I developed a layman's approach of trying to answer, which I am sure was a little more technical than a layman's approach, but certainly not a qualified engineer, obviously. My discipline is not that.

Q Do you have any understanding of the electronic circuitry of the pong game there, Plaintiffs' Exhibit 10?

A The same degree I have of Odyssey, and that type of circuitry that is used, integrated circuitry, versus discrete components that Odyssey used when we first started, analysis from our engineers as to the efficiency of the device, the efficiency of the electronics that are used, a big board with lots of integrated circuits on it, are they all effectively and efficiently being used, is it designed well, how is the TV constructed, what were they capable of taking out of the TV for this particular kind of use that might aid and abet our potential agreement with Seeburg, what would we have to do?

That is how I gained a little knowledge about it.

Q Do you know whether or not that Pong game there is a television set?

A I believe it is, yes, in every regard. It seems to me when we first received it, it had VHF and UHF tuners in it, but I just don't recall. It has been a number of years, and I just don't recall. It had a significance at one time, and it has no more. Time has washed away a few of the specific memories.

Q Based on whatever familiarity you have with

the Williams game you saw or became acquainted with, do you know whether or not that is a television set?

A I perceive it to be a television set.

Q You perceive it to be?

A Yes. In most cases my perception of more than just the outside, which in a lot of cases it may look like a TV set in its totality, as I think any typical consumer would perceive it as a TV set, that is, cabinet, tuners and the whole business.

Q I wasn't seeking what consumers would perceive it to be.

A What I perceived it to be?

Q Yes, sir.

A In all cases I perceived them as TV sets first of all. Stripped down TV's. By that I mean a lot of circuitry taken out of the TV, circuitry such as the tuners, speakers moved outside of it, maybe the cabinet is missing. The only way I saw that was visiting the Music Operators of America Trade Show, which is held in Chicago in October, I believe it was in October 1973, when I visited the first time, and I then had the opportunity to see inside some of the cabinets.

Other than that, I couldn't tell any more about it. I think the perception is when you look at that,

when you look at this, when you look at any elements of a TV set, I don't think the consumer, in at least my opinion --

Q I was not seeking your opinion about what consumers think.

A All right.

THE COURT: Are we discussing TV sets here as a term of art or as one commonly used, as a machine that will receive commercial television signals?

MR. GOLDENBERG: It is precisely the latter, your Honor.

THE COURT: Do you so understand the question?

THE WITNESS: Yes, and I would believe, and I believed all along, that all of these were capable of receiving commercial TV. It was not until I visited the Chicago Music Operators' of America Trade Show and was able to examine inside those cabinets to find that I may have some doubts as to its capability to receive it the way that TV was constructed.

The only point I was trying to make is that, as I think maybe I would do, I would take as much extraneous componentry off anything I could if I were going to disguise it behind a cabinet such as that. I would maybe take the cabinet off of the TV. I don't need to have that. I know what the cost of

that is, because I worked for a TV manufacturer.

MR. ANDERSON: Your Honor, with respect to your inquiry, just so that the record will be clear, I presume you were referring to Mr. Goldenberg's reference to "TV set" in these questions.

THE COURT: Yes.

MR. ANDERSON: Not necessarily in the broader spectrum of the lawsuit.

THE COURT: No. Just in terms of his specific question.

MR. GOLDENBERG: I would say to the Court that in the broader spectrum of the lawsuit, there is a dispute between the parties as to what is a television set, a television receiver.

THE COURT: That doesn't surprise me.

MR. ANDERSON: I think the Court will hear more about terms such as "television monitor", "television set," "television receiver."

I just wanted to make that clear.

BY MR. GOLDENBERG:

Q Mr. Fritsche, if you took the tuner out of the TV set, could it function as a television receiver?

A Sure.

Q It could?



5  
A Yes. You could put a direct video input into the TV.

Q Don't television receivers receive broadcast signals?

A Off the air, sure.

MR. ANDERSON: Your Honor, I also will object to the questioning as clearly outside the scope of the direct examination. I think it is leading into an area which is not even an area in which this witness should be interrogated, I believe.

MR. GOLDENBERG: Your Honor, this witness got into similarities of the pong game with the Odyssey game, similarities as to --

THE COURT: He related conversations. I don't think he expressed any opinion of his own as to pong being the same game as Odyssey.

MR. GOLDENBERG: No, he did not.

THE COURT: On the other hand, he seems to have some knowledge in the area, and I will overrule the objection.

BY MR. GOLDENBERG:

Q How would a television receiver with the tuner removed receive broadcast signals?

A It would be used in a monitor function and would be fed a direct signal on a given specific channel, which would then be displayed on TV.

Q Are you familiar with the term "radio frequency signals"?

A RF signals, yes.

Q Are you familiar with the terms, "modulation" and "demodulation"?

A Familiar with --

Q If you are not --

A I am only familiar with --

MR. ANDERSON: Your Honor --

THE COURT: I would agree that when we get that far into it, perhaps we are beyond the scope of the direct.

BY THE WITNESS:

A I guess my total understanding is Odyssey generates a signal that's an RF signal. It's sent through a cable to the TV, standard TV, that you or I have in our homes, received that way, okay?

I also know that Odyssey, if we could take some of the circuitry out of it, and the consumer had a video input plug on the back of their TV, we could bypass a lot of the Odyssey circuitry, the TV circuitry, and still generate our signal on the TV screen.

Now, that would be sending it into a TV other than the way that normal commercial TV goes, but --

BY MR. GOLDENBERG:

Q I understand, but Odyssey isn't built that way?

A No, because it has to work on everybody's TV, and we can't control how everybody's TV is made.

Q Do you know whether or not there is any radio frequency generated in the Pong game, Plaintiff's Exhibit 10, or in the defendants' game on the other side of the courtroom here?

A Whether there's RF signal or not?

Q Yes.

A Obviously, there's no way to tell from sitting out here. You would have to look inside.

Q So you don't know?

A No. This one, I believe, does have RF -- this is an RF -- and subsequent games, as I worked with Magnavox and was exposed to more of these games, there were some that were direct video versus RF.

MR. ANDERSON: Let the record show when the witness said "this" in that last answer, he was referring to Plaintiff's Exhibit 10.

THE COURT: All right.

BY MR. GOLDENBERG:

Q In 1972, and I believe you got a little unclear, whether it was '72 or '73, there were 89,000 1TL 200s?

A I did, and I recall that. There's 69,000 units in '72 -- that is, the Christmas season of '72 -- and then it went to 89,000 --

Q For '73?

A Right.

Q Were the '73 units the 1TL 200s?

A Yes. When I was speaking of those units, there are a lot of accessory games, and so when I am talking about those figures, I am talking about strictly the Odyssey unit itself, the model 1TL 200. I am not talking about any of the accessory games.

Q How about in 1974, were those 1TL 200s?

A Yes.

Q And was that true for '75?

A Well, in '75, until the time I left in September, they were all 1TL 200s, and I had been working on, the year before I left, the products which subsequently followed the 1TL 200 on the market, and it was known as the Odyssey 100 and the Odyssey 200, and those were introduced by Magnavox after I left the company.

Q So the figures you gave are the --

A 1TL 200.

Q -- 1TL 200.

What was the selling price of the 1TL 200?

A The basic selling price --

Q And I meant the retail price.

A Retail is 99.95. However, there were merchandising programs during that three-year period of time at various times. Some were merchandising programs to sell the product at other than 99.95, at a lower price, when bought in conjunction with a Magnavox TV set.

Our premium sales department also was marketing them at -- I think there was a slightly different retail price through banks, et cetera, different marketing avenues.

Q During these promotions, when it was sold in conjunction with the Magnavox TV receiver, the price then was \$50, wasn't it, or approximately?

A I believe so, yes.

Q So it wasn't at all times sold at the normal list price of approximately \$100, was it?

A Not the entire time, no, not all the units were sold at retail of 99.95.

Q Do you know what it sold for in 1975?

A It was still at 99.95. There were some -- there was an early buy inducement for the dealers which gave them a lower dealer cost price on the model just prior to me leaving, and what it ultimately went to on the market, I don't know. Probably significantly lower than 99.95, because it had two replacement models

that were following it on the marketplace at the time where the major marketing emphasis would be, so you wouldn't want to leave that up there when there were significant improvements.

Q Do you know how many of these are in dealers' hands?

A Of what?

Q The ITL 200?

A Are in dealers' hands?

Q Yes.

A Now?

Q Yes.

A Today? I doubt any, but some probably have some. I have been to Magnavox dealers that have a console stereo that was ten years old, and was still right out of the carton.

Q How about in 1975 when you left the company, how many were still in dealers' hands then?

A I couldn't even give you a figure, honestly. I just have no idea. There were still some, because Magnavox still had some that we were producing that were in our inventories, so, therefore, I am certain our dealers had some stock on it.

Q Did you have anything to do with going on to later models of the Odyssey game?

A The Odyssey 100 and 200, yes. I have written many papers, a planning point of view as to -- internally

in the company -- as to where the product line ought to go and what the development ought to be, and I would say the Odyssey 100, 200, 300 and 400, yes, I am very familiar with those.

Q Are you familiar with those products, sir?

A Yes.

Q What is the difference between an Odyssey 100 and 1TL 200?

A In what regard, in all the regards there are?

Q You tell me.

A Well, it's a single console model versus a model that has satellite player controls. There are no plugs, no wires to it, there is only one cable that goes on the model 100 and 200 to the TV. It's a much simplified electronic version. It does away with all of the secondary and extraneous games that were introduced with the model 1TL 200 for the main and simple purpose of now honing the product in in the marketplace into those areas that the consumers have most enjoyment with, and that's the action games.

There's still some enjoyment for the games in the 1TL 200 that had overlays and all of that, but we were running into too many problems because the TV manufacturers are trying to keep current with the best



kinds of TV tubes. Those TV tubes had constantly different sizes on them, and our overlays were running into problems.

Secondly, a lot of consumers didn't like all the overlay games that the 1TL 200 had, and, therefore, it was a change in the product.

The electronics was significantly different. The electronics of the Odyssey 1TL 200 were all discrete components on plug-in models.

In the Odyssey 100 and 200, we had Texas Instruments develop for us some custom integrated circuitry to be plugged into the model.

The electronics -- I think we had like one-third less electronic components by count. The cost, because of the type of development that we were able to do, came down significantly. We didn't have as many components in the two units. It was a compact unit. It had all the electronics there and had the switches for the consumer to turn to allow him to play two players, four players, play any of theree games that we had.

Q Was the retail price of the Odyssey 100 and the Odyssey 200 less than that of the 1TL 200?

A No.

Q I'm sorry?

A No.

Q Cost more?

A Now I have to qualify this. I left September 15th, okay? I left Magnavox that time and the next day started with Beatrice Foods. Those products were not yet in the marketplace. However, obviously, to get a product in the marketplace in September, you have to do your planning prior to that, so that the paper-work is ready, et cetera, okay?

The intended retail for the products was \$69.95 for the Odyssey 100 -- yes, \$69.95 for the Odyssey 100 -- and \$109.95 for the Odyssey 200, and that's my knowledge when I left there.

What they did or how it was changed, if it was, I am really not that clear on.

THE COURT: When you were talking just a moment ago about some of the differences, were you talking about the 300 and 400 at that point, or the 100 and the 200?

THE WITNESS: No, I was just talking about the 100 and the 200.

THE COURT: Go ahead, Mr. Goldenberg.

BY MR. GOLDENBERG:

Q But the price of the Odyssey 100 was less, the intended retail price of the Odyssey 100, was less than the 1TL 200; that's so?

A Yes. The only reason it existed was from a marketing strategy, that there were potential competitors coming into the marketplace, and Odyssey, with the electronics that are used in it, too many people were likening it already to the digital watch and the calculator, as you probably recall, like the rest of us, where a calculator cost you \$200, and today you can buy them for \$19.95.

The emphasis of the people who manufactured the componentry that goes inside have driven the prices down significantly through economies and scale of production.

One of the things I mentioned earlier in discussion this morning was that I was trying to preserve the direction of the product at a low price. It was suggested by Sanders Associates, when we first got the product, that, you know, we ought to be able to market for \$19.95. I would love to, if we could make a profit. And it can't be done.

That was one of the principles under

which we worked to develop and bring about the Odyssey 100 and 200, was to try and bring down our cost of the electronics in the product.

On the Odyssey 1TL 200, the dealer cost price ranged from \$65 to \$72. It had a retail price of \$99.95. Out of that dealer cost price of \$65, our material, labor and overhead to produce that product was approximately \$37 a unit.

Out of that \$37, no more than \$5 was required to cover all the 12 game overlays, and two sizes, all the game aids, all the extraneous material. The rest was all wrapped up in the electronics. It was just an expensive device to produce.

Q How is it, in light of what you have said, that the use of integrated circuitry permitted cost reduction and the Odyssey 200 ended up costing more? What was the difference there?

A It didn't cost more.

Q Did I misunderstand you?

A No, the Odyssey 100 and 200 did not cost more than the 1TL 200.

Q Oh, I misunderstood you. And this was because of the incorporation of this technology of integrated circuits?

A Right.

Q Which permitted this substantial cost reduction?

A Right, and the prices I was mentioning had inflated, obviously -- well, I say obviously -- I will make it obvious -- that is, the \$35 I was talking about as a material, labor, overhead cost was 1972 cost, and that figure escalated to about \$47 by 1975, and anticipation of that kind of escalation of cost was what prompted the integrated circuitry development back in '74.

Subsequently, I believe when I left there, the Odyssey 100 and 200, with its integrated circuitry and all the extra sophistication, probably came in at a material, labor, overhead cost equal to what the original Odyssey was back in '72.

Fritsche - cross

Q Now, you first saw the Pong game in 1973?

A Right.

Q Did it have integrated circuitry?

A Yes.

Q So the Pong game had integrated circuitry before the Odyssey game did, did it not?

A Well, it used -- it had no unique integrated circuitry custom designed for video gaming. It used off-the-shelf integrated circuits that were there, and that was the point I tried to make earlier about, in discussing with our engineers how efficient is the device, this pong device that is here in the courtroom, when we were examining it, it was not very efficient, there were numerous integrated circuitries all in tandem on one big printed circuitboard, and it was the opinion of our engineering department in a report to me that it was very inefficient, because it was using existing integrated circuits off the shelf and was not using much of the capacity of any of the integrated circuits that was incorporated in the device.

Q Are you familiar with the terms "medium scale" or "large scale integrated circuits"?

A LSI and MSI, yes.

Q Now, give your understanding of those two terms, sir.

A It's very general. As the term implies -- that's where I get a great deal of my knowledge of what the two mean -- in that medium scale or large scale integrated circuit -- it has to do with, in my understanding, the capability of the device to contain various layers of circuitry. It's a photographic process to produce them, in my understanding, and the large scale integrated circuit simply can have more capability and potential to deliver in a system, or to the user, than the medium scale integrated circuitry can.

Q Would you perhaps agree with this, that these terms refer to the number and density of the electronic components within the integrated circuit package?

A Yes.

Q That in a large scale integrated circuit, there are far more components per cubic inch, if you will, than in a medium scale integrated circuit?

A I would agree with that.

Q Do you know whether or not any of the Odyssey games use large scale integrated circuits?

A To my knowledge, they are MS size, not LS.

THE COURT: Mr. Goldenberg, I presume these matters are going to be covered by other witnesses as well?

MR. GOLDENBERG: Yes, sir.

THE COURT: Let me suggest that you not cover it with this witness, because it's just repetitious.

MR. GOLDENBERG: All right. We got into the matter of integrated circuits, your Honor, and I have completed that subject.

THE COURT: All right.

BY MR. GOLDENBERG:

Q Now, sir, with respect to your meetings with Seeburg people, was there any memorandum made of your meeting in Fort Wayne with this Seeburg representative whose name you do not recall?

A The only one is one that we mentioned earlier, and it was my memo dated March 13th. It's Exhibit 97-M. I look back at it now, and why I didn't put his name in there, I don't know, but it's not. This is the only memorandum, and this is the result of our meeting and my analysis of it as to what the tasks at hand were for Magnavox to prepare a proposal for Seeburg.

Q I see, sir. And to be sure I understand, this memorandum followed that meeting with the Seeburg people?

A Yes, yes.

Q Do you believe it accurately reports the conversation at that meeting?



A Yes.

Q I believe you said at that meeting there was some discussion of patents, is that correct?

A Yes.

Q Was there any discussion about specific patents?

A No -- well, specific only in that it was general conversation about -- that the Seeburg representative made to me relative to the patents Magnavox was exclusive licensee for, concerning the video gaming, but as to a specific patent number, no, we didn't, you know, discuss it in that detail.

MR. GOLDENBERG: Your Honor, I have no further questions.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. ANDERSON:

Q Mr. Fritsche, I would like you to look at Plaintiffs' Exhibit 97-H, the memo of September 30, 1971, and the attached questionnaire, and Plaintiffs' Exhibit 97-I, your combined survey, and state, if you can, whether there is any relationship between the numbers of the questions and the numbers of your combined survey?

A I'm not certain I --

Q In other words, is there a correlation in the

Fritsche - redirect

numbering of the two documents?

A Yes. On the questionnaire, the second page, midway through the page, over on the left side, is question-- or No. 2 -- with a question following it, "How would you describe your interest level?" Okay, that question No. 2 responds to the item No. 2 on Exhibit 97-I, and that is a tabulation of the number of people who responded with a specific answer out of the total number of respondents, and then a percentage was calculated, and that was performed for both California and Michigan, and then summarized as a total.

Q I notice then there's a paragraph 3 in the questionnaire, and a similar paragraph 3 on the first page of your Plaintiffs' Exhibit 97-I, and I take it that the relationship is the same there?

A Exactly, all the way through. In fact, all the questions were tabulated, and this is the result of all the questions that were tabulated.

Q Now, there is a 4 on the questionnaire, and, as Mr. Goldenberg indicated, it says, "Question omitted," and on Plaintiff's Exhibit 97-I, I notice there's no data for 4 under either California or Michigan. Does that refresh your recollection at all with respect to the status of question 4?

A I wish it could, but I would have to conclude that I -- I don't know -- there could have been a 4 response to California, and since I saw none for Michigan, knowing myself, I probably would have still put it down there, and, since it's not there, I would more likely conclude that there was no question 4 in California, either.

Q In the exhibit which Mr. Goldenberg handed you, Exhibit 97-A, he had you look at a statement regarding confidential reasons for the selection of an HEC for the initial test?

A Right.

Q In your demonstration -- in your survey at Grand Rapids, as I understand it, you conducted the actual test in your sound room inside of the home entertainment center?

A That's correct.

Q I think you said you went out into the mall to get people?

A Yes. In fact, by the third night, our sales promotion manager, Don Hall, had also joined us, and the third night we had a 25 inch console TV -- this particular store had two openings into the mall -- and that evening, with the rifle game, Don Hall, the sales promotion manager for Magnavox, and I, turned a 25 inch console TV around so that it could be viewed by the passers by, -- you know, people passing by in the mall, okay? -- and he walked out into the mall, with the rifle, and was shooting at the TV screen, which, obviously, attracted a lot of attention and a lot of people, and from that audience, we were selecting respondents to take inside and view the home game and talk to them, and their responses are embodied in these results.

MR. ANDERSON: No further redirect, your Honor.

THE COURT: All right.

MR. GOLDENBERG: Nothing else, your Honor.

THE COURT: All right, you may stand down.

(Witness excused.)

THE COURT: The Court will recess until 2:00 o'clock.

(Whereupon the trial of the above-entitled cause was recessed to 2:00 p.m. of the same day and date.)